

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER GRANTING LEAVE TO FILE AN APPLICATION FOR
A NEW SURFACE WATER APPROPRIATION WITHIN AN AREA SUBJECT TO A
MORATORIUM BY PETITION VAR-8941

WATER DIVISION 1-A

BACKGROUND

1. On July 14, 2004, the Department of Natural Resources (Department) issued a formal moratorium on all new surface water appropriations in the Platte River Basin upstream of the confluence with the Loup River near Columbus, Nebraska. The moratorium included all tributary streams above the Loup River confluence including the North and South Platte Rivers and tributaries.
2. On January 1, 2007, work officially commenced on the Platte River Recovery and Implementation Program (PRRIP or Program). PRRIP's goals include reducing shortages to U.S. Fish and Wildlife Service target flows and providing additional land habitat for endangered species in the Lexington to Chapman reach of the Platte River. In order to meet these goals, each signatory to PRRIP has adopted depletions plans to address the mitigation of the adverse impacts of water-related activities on streamflows in the Platte River. The State of Nebraska, through the Department will utilize the integrated management process to achieve the goals of PRRIP.
3. On August 9, 2019, The Second Increment Basin-Wide Plan (BWP) for Joint Integrated Management of Overappropriated Portions of the Platte River Basin (BWP) and The Second Increment Integrated Management Plan and Associated Surface Water Controls (IMP), jointly developed by each of the following NRDs were adopted by Order of the Department: the North Platte NRD, the South Platte NRD, the Twin Platte NRD, the Central Platte NRD, and the Tri-Basin NRD (Platte River Basin NRDs). The individual integrated management plans are required to be in conformance with the goals and objectives of the BWP.
4. As part of the surface water controls adopted by the Department pursuant to Neb. Rev. Stat. § 46-716(1)(b), the moratorium on issuing new surface water appropriations was continued in each individual IMP.
5. On April 22, 2020, Kent O. Miller, Manager of the Twin Platte Natural Resources District (TPNRD), (Petitioner) filed petition VAR-8941 for Leave to File or Consider an Application for a Permit to appropriate Water within a Moratorium Area or Stay Area. The petition requests leave to file an application for a permit to appropriate water for the purpose of groundwater recharge via the Paxton-Hershey Canal.

6. *Nebraska Revised Statutes* § 46-714(3)(n) allows for new surface water appropriations if the Department grants leave to file an application and subsequently approves a permit for such new use.
7. When filing such a petition, a project proponent must offer a clearly stated basis for such request and must offer sufficient good cause shown. *Department of Natural Resources Rules for Surface Water, Title 457 Neb. Admin. Code* Chapter 23 lists six circumstances that may be put forward as justification for granting a petition to apply for a new water use, in conjunction with an examination of good cause shown.

ANALYSIS

1. The formal moratorium issued by the Department in 2004 has been continued in the surface water controls included in the individual NRD IMPs adopted by the Platte River Basin NRDs and the Department.

Because the Platte River Basin is currently undergoing integrated management for the purposes of reducing depletions to streamflow, any new consumptive use must be examined for its potential effects on extant surface and groundwater users and upon all matters of significant public interest and concern. This includes assessing both positive and negative impacts on the State's ability to comply with interstate agreements, programs, decrees and compacts, including PRRIP. Thus, any proposed project must be scrutinized to prevent conflict with (a) the goals, objectives and actions necessary to implement the IMPs adopted by the Platte River Basin NRDs and the Department and (b) the water needs of Water Action Plan projects that will be implemented under PRRIP. Applications for potential beneficial uses that are not clearly non-consumptive will be presumed to be at least partially consumptive. Therefore, an analysis of the effects of a proposed new diversion on these existing uses and responsibilities is required in order to determine whether sufficient good cause exists to grant a variance to apply for a new use.

2. Petitioner requests a permit to divert water for the purpose of groundwater aquifer recharge to assist in optimizing water management.
3. Petitioner proposes to divert excess flows at the headgate of the Paxton-Hershey Canal in the non-irrigation season if river conditions are such that excess flows are available.
4. Petitioner is requesting to continue activities in promotion of integrated management and PRRIP goals by proposing to take advantage of excess flows that may exist for the purpose of groundwater recharge.
5. The expected benefits from projects such as this are (a) to mitigate post-1997 new depletions by replacement of groundwater that was withdrawn for irrigation and (b) the enhancement of base flow returns to the Platte River by way of aquifer recharge, using retimed excess flows to augment streamflow when it is more necessary to help satisfy target flows and State-protected flows. Recharge potential was demonstrated in previous recharge projects.

CONCLUSIONS

1. The diversion project proposed on the attached draft application is in conformity with integrated management plan surface water controls and potential conjunctive management projects. In addition, recharge from this project should assist NRDs in meeting their offset responsibilities under the BWP and individual NRD IMPs.
2. The potential benefits of groundwater recharge that Petitioner expects to result from the proposed project outweigh the effects of any stream depletions from diverting the water during times of excess flows.
3. Conditions are such that excess flows may be available in the future.
4. For these reasons, Petitioner should be granted leave to file an application to divert excess flows for groundwater recharge.

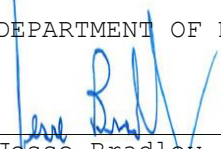
ORDER

IT IS HEREBY ORDERED:

1. Petition VAR-8941 meets the requirements of *Department of Natural Resources Rules of Surface Water, Title 457 Neb. Admin. Code Chapter 23, § 001.03*, has shown sufficient good cause, and is GRANTED.
2. This Order granting leave to file or consider an application for a new surface water appropriation within a moratorium or stay area pursuant to petition VAR-8941 shall be in effect for one year from the date this order is signed.
3. This decision shall not bind the Director to approve any application to which it relates, or in any way be used as evidence of prejudice for the Director's future decisions concerning the specific approval requirements of such an application.

DEPARTMENT OF NATURAL RESOURCES

April 27, 2020



Jesse Bradley, Interim Director

A copy of this Order was posted on the Department's website. A copy of this Order was provided to the Department's field office in Bridgeport, Nebraska. A copy of this Order was mailed on April 27, 2020, to the following:

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